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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,166	02/26/2004	David W. Disc	07880007AA	9136

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WHITHAM, CURTIS & CHRISTOFFERSON & COOK, P.C.
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EXAMINER

RICHMAN, GLENN E

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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11/28/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/786,166

Applicant(s)

DISE ET AL.

Examiner

Glenn Richman

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5, 6, 13-15, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crespo in view of Blom.

Crespo discloses a handle (1); a pulley (5) connectable to a weight stack or resistance machine or device (10), said pulley being movable relative to said weight stack or resistance machine or device after connection to said weight stack or resistance machine or device (fig. 1, pulley will inherently move relative to the device 10); and a cord which passes through said pulley and is connected to said handle at two points separated along a length of said handle (4), said pulley being moveable along said cord to locations which are closer to or further from either of said two points (see fig. 1, pulley is movable on 10, or could be removed and moved closer or further ...).

Crespo does not disclose said handle being freely rotatable about a longitudinal axis passing through the handle.

Blom discloses a handle being freely rotatable about a longitudinal axis passing through the handle (fig. 3).

It would have been obvious to use Blom's handle, with Crespo's device, as it is well known to use a freely rotatable handle, as taught by Blom, for providing a flexible training apparatus.

Crespo further disclose said handle being freely shiftable, movable or turnable with said cord passing through said pulley during shifting, moving or turning (see fig. 1), said handle being able to be used to move said pulley relative to said weight stack or resistance machine or device subject to resistance from said weight stack or resistance machine or device (fig. 1, the device (10) providing a resistance to the handle), a protective sheath positioned over said cord at one or more locations (7), a swivel connector associated with said pulley (fig. 5), handle is a ball (1).

As for the various species of claims 14, 15, 17 and 18, it would be obvious to use a football or bowling ball with Crespo or Blom, as it is well known to use a football or bowling ball in training devices, and as Crespo or Blom lends themselves to be used with either.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Crespo and Blom and further in view of Masters.

Crespo does not disclose the cord is made of rope.

Masters discloses a cord made of rope (abstract).

It would have been obvious to use Masters rope with Crespo's cord, as it is well known to use a rope in a swing training device, as taught by Masters, for providing a link to the resistance device.

Claims 3, 4, 7-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Crespo and Blom and further in view of Halsworth.

Crespo does not disclose the cord is made of rubber.

Halsworth discloses a cord made of rubber (abstract).

It would have been obvious to use Halsworth rubber with Crespo's cord, as it is well known to use a rubber in a swing training device, as taught by Halsworth, for providing a link to the resistance device.

Halsworth further discloses said cord is or includes a metal cable (col. 1, lines 56-63), handle includes a golf club grip (col. 1, lines 56-63), portion of a softball or baseball bat (col. 1, lines 56-63), said handle includes at least a portion of a hockey stick (col. 1, lines 56-63), at least a portion of a tennis racket (col. 1, lines 56-63), at least one of said two points where said cord and said handle are connected includes a member which encircles said handle and permits rotation of said handle within said member (fig. 11), where said cord and said handle are connected includes washer assembly which fits within said handle and permits rotation of said handle relative to said washer assembly (fig. 1).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 16 is rejected under 35 U.S.C. 102(e) as being anticipated by Crespo.

Crespo discloses a ball member (1); and a connector connected to and spaced away from the ball member for connecting the ball member to a weight stack or resistance machine (2,3), said connector permitting rotation of said ball member about an axis through said ball member which extends to said connector (fig. 1), and said ball member being freely shiftable, movable, or turnable with respect to said connector during shifting, moving or turning (fig. 1), said connector including a cord connected to one point on said connector and to another point spaced away from said one point either along the length of said connector or on said ball device, and a pulley which is moveable along said cord to locations which are closer to or further from either of said one point or said another point (fig. 1), said pulley being connectable to a weight stack or resistance machine or device (10), said pulley being movable relative to said weight stack or resistance machine or device after connection to said weight stack or resistance machine or device (fig. 1, pulley will inherently move relative to the device 10);, and said ball member being able to be used to move said pulley relative to said

weight stack or resistance machine or device subject to resistance from said weight stack or resistance machine or device (fig. 1, the device (10) providing a resistance to the ball member).

Response to Arguments

1. Crespo does not show a connection to a weight stack or resistance machine or device, and is not focused on applying resistance training to the user's sports specific muscles.

As to 1 above, Crespo shows a connection to a "device" (10). A "device" does not limit the claim to a weight stack or resistance machine.

2. Blom does not show a connection to a weight stack or resistance machine or device, and is not focused on applying resistance training to the user's sports specific muscles.

As to 2 above, Blom is not relied upon for the "weight stack or resistance machine or device", and the claim does not limit the apparatus specifically to "resistance training to the user's sports specific muscles."

3. Claims 1 and 16 require that the pulley be moveable relative to the weight stack or resistance machine or device. This allows resistance to be applied to sports specific muscles as a sports specific movement is performed (see Figures 2a-c of the application). In sharp contrast, the pulleys in Crespo and Blom are anchored on a frame when they are in use. Furthermore, at no point in Crespo and Blom do the devices disclosed therein apply resistance training to sports specific muscles.

As to 3 above, to the extent claimed, Crespo's pulley is moveable with respect to the device and to the extent claimed a resistance will be applied to the handle of Crespo by the attachment of the cord.

4. It is noted that the connection to the bat handle 26 in Halsworth is at the top. While the connection may be on either side of the bat handle, claim 1 specifically requires connections at different locations along the length of the handle. Thus, with the Halsworth device, like the Masters device, the wrists and forearms will be overworked in the same manner discussed in application on page 3. By not having the connections to the cord at two different locations on the length of the bat, the user is not able to obtain resistance on his bat swing specific muscles all the way through the swing (as he moves from one side to the other and rotates his hands during the swing).

As to 4 above, Masters is relied upon only for the disclose or the cord being made of rope and Halsworth is not relied upon for claim 1.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn Richman whose telephone number is 571-272-4981. The examiner can normally be reached on Mon-Thurs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571)272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Glenn Richman
Primary Examiner
Art Unit 3764